

IN THE MATTER OF: * BEFORE THE MARYLAND
JUDGE JOHN H. McDOWELL * COMMISSION ON
CJD 2011-013 & CJD 2011-014 * JUDICIAL DISABILITIES

TO: Judge John H. McDowell
Associate Judge, Circuit Court for Washington County
Fourth Judicial Circuit

PRIVATE REPRIMAND

TAKE NOTICE that the Maryland Commission on Judicial Disabilities (the "Commission"), through its Investigative Counsel, made and completed an investigation of Judge John H. McDowell's conduct with regard to his handling of a civil case known as David Zickafoose, et ux. vs. Maxxam Homes, LLC, et al. on February 15, 2011. Judge McDowell and his counsel were notified of the nature of the investigation and tendered such written and verbal responses thereto as they wished. Judge McDowell, his counsel, and the Commission's Investigative Counsel were afforded an opportunity to present information to the Judicial Inquiry Board in July 2011. The Judicial Inquiry Board heard Judge McDowell's explanation, reviewed his written response and his counsel's written response to the complaints, and heard from Investigative Counsel, regarding the facts and circumstances of this case. The Commission was also permitted to review, by consent, the deposition taken of Judge McDowell by Investigative Counsel on September 26, 2011. Investigative Counsel proposed, and Judge McDowell and his counsel agreed, that these cases will be resolved through the issuance of this Private Reprimand, that will be made public, in conjunction with a Stipulation of Facts and a Waiver of Hearing (the "Stipulation"). The parties all agree that Judge McDowell will enter into a Deferred

Discipline Agreement. The parties further agree that this Private Reprimand and the Stipulation of Facts shall be made public, while the Deferred Discipline Agreement shall remain private and confidential. The Commission, having reviewed the Stipulation, as recommended by the Judicial Inquiry Board and the Investigative Counsel, and as agreed to by Judge McDowell, hereby incorporates and adopts by reference the attached Stipulation of Facts and Waiver of Hearing into this Private Reprimand.

As there was no significant dispute of facts between Investigative Counsel and Judge McDowell, they, as the parties, agree that the attached Stipulated Facts support a finding of violation of the Maryland Rules of Judicial Conduct, as found in Maryland Rule 16-813. Investigative Counsel and Judge McDowell agree that these Stipulated Facts demonstrate, by clear and convincing evidence, that Judge McDowell violated the Maryland Rules of Judicial Conduct on February 15, 2011, when he directed that the assignment clerk for the Washington County Circuit Court publish and post a docket showing that the Zickafoose case was scheduled for a jury trial on February 16, 2011. At the time that Judge McDowell directed the assignment clerk to publish and post the docket sheet, Judge McDowell knew that the case would not be heard by a jury on February 16, 2011, and that no jurors were to be called in for the case. Judge McDowell's decision to have the docket posted and to advise the lawyers for both parties that the case was being scheduled back in, on less than 24 hours notice, for a jury trial, was in violation of the Maryland Rules of Judicial Conduct.

Investigative Counsel, Judge McDowell and his counsel agree that the information gained during the investigation, the docket sheet, and the statements made by witnesses, including Judge McDowell all provide an evidentiary basis for the Commission to find by

clear and convincing evidence that Judge McDowell engaged in sanctionable conduct under the Maryland Rules of Judicial Conduct. Judge McDowell's admission of his actions with regard to the Zickafoose case on February 15, 2011, was a significant factor in the Commission's decision to accept this Stipulation and Private Reprimand.

The Commission concludes, based upon clear and convincing evidence, that Judge John H. McDowell violated Rule 16-813, Section 1, Rule 1.1 and Rule 1.2.¹ Judge McDowell's conduct on the afternoon of February 15, 2011, in ordering a case set back in, in less than 24 hours, misleading the attorneys, and directing the assignment clerk to create a false document and post that document, all were in violation of the Maryland Rules of Judicial Conduct. The Commission finds by clear and convincing evidence that Judge McDowell acted in violation of Rule 1.1 and Rule 1.2 of the Maryland Rules of Judicial Conduct. The Maryland Rules of Judicial Conduct provide as follows:

Maryland Rule 16-813, Section 1:

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including this Code of Judicial Conduct.

Rule 1.2 Promoting Confidence in the Judiciary

(a) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) A judge shall avoid conduct that would create in reasonable

¹The Commission also considered evidence as to whether Judge McDowell violated Rule 16-813, Section 2, Rules: 2.2, 2.3, 2.5, 2.6, 2.8 and 2.9 of the Maryland Rules of Judicial Conduct. The Commission is deferring any consideration of those matters as part of the Deferred Discipline Agreement that is being executed simultaneously with this Private Reprimand and Stipulation of Facts and Waiver of Hearing.

minds a perception of impropriety.

The Commission further determines that because Judge McDowell's conduct included the public posting of false documents and required litigants to appear in court, under a false impression, this Private Reprimand and the existence of the Deferred Discipline Agreement shall be made public. The Commission further intends for this Private Reprimand to serve as a warning that any further such behavior or conduct by Judge McDowell may result in charges and possible further discipline.

The Commission hereby issues this Private Reprimand which concludes the Commission's case with regard to Rules 16-813, Section 1.1 and Section 1.2.

Date

Alexander Wright, Jr., Chair
Maryland Commission on Judicial Disabilities

Seen and Consented to:

Date

Judge John H. McDowell

Date

Alfred L. Scanlan, Esquire

Date

Steven P. Lemmey
Investigative Counsel